



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/168681

PRELIMINARY RECITALS

Pursuant to a petition filed September 09, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Washington County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on October 13, 2015, at West Bend, Wisconsin.

The issues for determination are whether the evidence demonstrates that Petitioner was overissued FoodShare benefits because the father of her child was living in the home.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Anthony Gerhing

Washington County Department of Social Services
333 E. Washington Street
Suite 3100
West Bend, WI 53095

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Washington County.
2. Petitioner is alleged to have been overpaid FoodShare benefits in the total amount of \$3213.00.

3. The first overpayment alleged is for the months of October, November and December 2014 in the amount of \$1071.00 (claim # [REDACTED]). The reason for this alleged overpayment is that the agency alleges that Petitioner's child's father (TMR) was in the home at the time of acknowledgement of paternity in September 2014 and that his presence was not reported.
4. The second overpayment is alleged for the months of January through June 2015 in the amount of \$2142.00 (claim # [REDACTED]). The reason for this alleged overpayment is agency error, TMR was reported to be in the home of Petitioner on a December 2014 review but the agency did not follow through and include him in the household.

DISCUSSION

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a “client error”), or an agency error (also known as a “non-client error”). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose “fault” caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to agency error may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to client error may be recovered for up to six years after discovery. *Id.*

Generally speaking, to successfully establish an overpayment claim, the county agency needs to present: a copy of a notice and overpayment computations that were sent to the recipient; primary documentation proving the misstatement, omission, or failure occurred and caused FoodShare to be issued for which the client was not otherwise eligible; documentation of the benefits actually paid, Case Comments corroborating the facts and timeline of the original reporting, subsequent discovery, client contacts, etc. The agency must establish by the “preponderance of the evidence” in the record that it correctly determined the client was overpaid. This legal standard of review means, simply, that “it is more likely than not” that the overpayment occurred. It is the lowest legal standard in use in courts or tribunals. The recipient may then offer any documents or testimony that rebuts any part of the agency claim. The agency, likewise, may then choose to submit other documents or testimony to address and attempt to rebut the defenses raised by the recipient.

As noted, there are 2 overpayment claims here – the first client error and the second agency error. Both fall within the time limits allowed for collection of an overpayment. Each claim is based on different circumstances.

As for the first claim – I am partially reversing it. Other than the birth of the child and acknowledgement of paternity the evidence is not sufficient to show that TMR was living with her during the months of October and November 2015. A case note from June 2015 indicates that Petitioner stated that she never reported TMR out of the home but I found Petitioner to be very credible in her hearing testimony. She testified that TMR had no car until mid-November 2014 (the car was purchased on November 13, 2014) and was living with his father as it allowed him to get to work. Her demeanor in answering a question was sufficient to convince me that she was truthful in her testimony that she and TMR did not reside together during the months of October and November 2014.

As for the second claim – I am sustaining it. Petitioner did report the father of the child in the home but he was not added to the case. While Petitioner does not think it fair to recover an overpayment that it not her fault, the Federal law clearly requires recovery. Here there is no question as to the error – it was agency

error. Nonetheless, Federal law requires that agency errors resulting in a FoodShare overpayment be recovered provided the error is discovered within 12 months. The discovery was within 12 months of the overpayment in this case. The calculation of the amount was not challenged here.

I do note for Petitioner's benefit the following *FSH* provision as to repayment of an overissuance:

7.3.2.6 Allotment Reduction

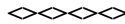
An overissuance due to any type of error will be recovered from a FS group participating in the program by reducing their allotment.

The type of error determines the amount that will be recovered each month.

1. Client/Nonclient error. CARES will reduce the allotment by the greater of 10% of the group's monthly allotment or \$10 each month. The \$10 minimum benefit level for 1 or 2 person groups applies before CARES reduces the allotment.
2. IPV. CARES will reduce the allotment by the greater of 20% of the group's monthly entitlement or \$20 each month. The entitlement is the amount of benefits the group would have received if not for the disqualification of a FS group member. The \$10 minimum benefit level for 1 or 2 person groups applies before CARES reduces the allotment.

CARES will not allow you to reduce the minimum deduction to less than \$10 for Client/Nonclient and less than \$20 for an IPV.

FSH, §7.3.2.6.



7.3.2.12 Repayments

A client who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a client has received three dunning notices, s/he is subject to both tax intercept and monthly repayment.

The policies for monthly repayments are listed on the repayment agreements:

1. Overpayments less than \$500 should be paid by at least \$50 monthly installments
2. Overpayments \$500 and above should be paid within a three-year period either by equal monthly installments, or by monthly installments of not less than \$20.

FSH, §7.3.2.12.

CONCLUSIONS OF LAW

1. That the evidence does not establish that Petitioner was overissued FoodShare for the months of October 2014 and November 2014.
2. That Petitioner was overissued FoodShare as alleged as a result of agency error for the period of January 2015 through June 2015.

THEREFORE, it is

ORDERED

That this appeal is remanded to the agency with instructions to partially reverse overpayment claim # [REDACTED] by eliminating the months of October and November 2014 from the overpayment. This must be done within 10 days of the date of this Order.

As for the December 2014 portion of overpayment claim # [REDACTED], this appeal is dismissed.

As for claim # [REDACTED] in the amount of \$2142.00, this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 6th day of November, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 6, 2015.

Washington County Department of Social Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability